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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,279	02/08/2005	Israel Sar-El	Tsivion P2US0	9992

7590 08/14/2009
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EXAMINER

THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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08/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/524,279	Applicant(s) SAR-EL ET AL.	
	Examiner VIREN THAKUR	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. As a result of the amendment to the claims, the rejection of claims 1-9 under 35 U.S.C. 112, second paragraph has been withdrawn.
2. Also, as a result of the amendment, the rejection of claims 1-3 and 5 under 35 U.S.C. 102(b) as being anticipated by Wenk (US 2183799) has been withdrawn.
3. Also as a result of the amendment to the claims, those rejections of claims 4, 5 and 6 under 35 U.S.C. 103(a) have also been withdrawn.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the flank of said product." There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the piercing of said product." There is insufficient antecedent basis for this limitation in the claim. Furthermore, claim 5 recites the limitation "wherein said advancing of said device for wrapping bands, comprises the piercing of said product." In light of the lack of antecedent basis, the above limitation is not clear as to whether the device for wrapping bands also comprises a piercing

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element or whether the piercing is also intended to be recited as a particular step to be performed by the device for wrapping bands. Alternatively, the claim is not clear as to whether "the piercing" modifies "said advancing" or "said device." That is, does the advancing comprise the piercing or does the device comprise the piercing?

Claim 6 recites the limitation "hologram is connected to said band by using any one of the means taken from a group consisting of: threading onto a band; a riveting; a welding; and a gluing." This limitation fails to further limit independent claim 1, which recites that the hologram is connected to the band by welding.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 1, 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenk (US 2183799) in view of Tinklenberg et al. (US 6058639), Fortsch (US**

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5042181), Larsen (US 5778583), Stehouwer (US 4407082) and Stowman et al. (US 5733652) and in further view of Susi et al. (US 5286542), Spratt Jr. (US 3602421), Spencer et al. (US 4770729) and Hollander (US 4227614) and in further view of Ruell (US 4171766), Fukami (US 5799375) and Malosse (FR2463959).

Regarding claim 1, Wenk teaches the concept of providing a band and marking food products with a band so as to indicate that the food product is labeled as authentic. For instance, Wenk teaches indicating that the tag, which is pierced through the food product, indicates that the product is kosher (figure 1 and page 2, left column, lines 25-27), as further recited in claim 2.

Claim 1 differs from Wenk in the particular steps required for associating a tag comprising indicia, to the band that has been wrapped around the food product.

It is noted that Tinklenberg et al. teaches that it was conventional in the art to first wrap food products with a band and then apply a marking tag to the wrapped band (figure 5). The art to Wenk and Tinklenberg are similar in that both teach the concept of applying a band around a food product while also associating a tag comprising indicia to the band that wraps around the food product. To therefore first wrap the food product with a band and then associate the tag comprising indicia to the wrapping band (i.e. the particular order in which the tag comprising indicia was associated with the wrapping band), would have been an obvious matter of choice and/or design to one having ordinary skill in the art. Regarding the particular method by which to associate the indicia comprising tag to the band, it is noted that claim 1 recites the steps of coupling an anvil to the surface of the product and then winding the band around the product and

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anvil and welding a hologram, which is positioned between the tip of a welder and the band. It is noted that the art is replete with different conventional expedients for associating an indicia comprising tag to a wrapping band. For instance, Tinklenberg et al. teaches employing a particular type of hook (figure 3 and 4). Wenk teaches employing another looping band. Fortsch teaches employing a snap fit to secure the tag to the cable tie (figure 1, items 30, 35 and 26). Larsen teaches employing an adhesive bond for associating the tag with the wrapping band (column 6, lines 6-26) and Stehouwer teaches employing ultrasonic welding for associating a tag with a tie (i.e. band) by using ultrasonic welding, for the purpose of preventing separation of the tag with the tie (column 2, lines 20-47). Therefore the art is replete with teachings of conventional expedients for securing a tag onto a band that wrapped around a product. Stehouwer teaches the advantages of employing ultrasonic welding is to prevent separation of the tie from the tag. Additionally, Stowman et al. teaches applying a band around a product and after applying the band to the product, using conventional techniques such as ultrasonic welding (column 4, lines 24-27) for the purpose of securing an identification tag to the band (column 5, lines 5-43, for instance as well as examples 18 and 19 and column 13, line 61 to column 14, line 3). Nevertheless, in employing ultrasonic welding, Susi et al. and Spratt Jr. both teach that it was a conventional requisite in the art to employ an anvil (figure 1, item 14 of Susi) and (figure 1, item 28 of Spratt Jr.), for the purpose of facilitating the application of ultrasonic energy to secure two materials together. Spencer also teaches the concept of applying a label tag to a wire or band (figure 3, item 13A, item, 35, 45 and 47) by using an anvil

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(figure 3, item 47) and a sonic welder (figure 3, item 45). Hollander further evidences that ultrasonic welding is a known technique wherein a weld is made by employing an anvil behind the product to be welded (column 3, lines 1-14). Clearly, the purpose of the anvil is to provide the support for applying the weld for securing the two items together. Since the art recognized several different conventional techniques for associating the tag to the band, such as an adhesive, another cable and ultrasonic welding, to therefore employ ultrasonic welding would have been an obvious substitution of one conventional associating expedient for another conventional associating expedient. Therefore, once the art recognized using ultrasonic welding as a conventional expedient for applying an indicia comprising tag to a band that has been wrapped around a food product, as taught by Stehouwer and Stowman, for instance, to therefore place an anvil between the band and the product, for the purpose of applying the conventional technique of ultrasonic welding for securing the tag to the bag so that the tag and band do not separate would have been obvious to one having ordinary skill in the art, since the application of an anvil has been the conventional expedient for applying ultrasonic welding for securing two materials together.

Regarding the step of feeding a hologram to a location between the tip of a welding means and the band, it is noted that once the art recognized using ultrasonic welding for the purpose of securing a tag to a band, it would have been obvious that the tag to be welded to the band would have to have been placed between the welding apparatus and the band to which it would have been welded. Regarding the particular use of a hologram, it is noted that Ruell teaches the concept of applying a hologram

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onto a card, wherein it is impossible to separate the identification card from the hologram without visible destruction of one or the other (column 2, lines 3-8). Ruell thus teaches that it was conventional in the art to weld holograms onto a substrate for the purpose of providing added authenticity of the matter printed on the marking tag (column 1, lines 56-66). Since Wenk teaches that a printed copy (1) for marking and identification purposes has been provided on one side of the marking tag, to further modify the marking tag, and employ a hologram that is impossible to remove without destroying the tag or the hologram would have been obvious to one having ordinary skill in the art, for its art recognized function.

Regarding the steps of retracting the welder and the extracting of the anvil, these also would have been obvious steps once the tag/hologram has been secured to the band by ultrasonic welding.

Although the patentability of the method cannot be predicated on the particular apparatus employed to perform the method, it is noted that devices for winding a band around a product have been conventionally employed for their art recognized function, as evidenced by Fukumi (figure 2). Malosse further evidences automatic devices for applying bands through and around a meat product. Regarding the advancing of the device, it would have been obvious to the ordinarily skilled artisan that the device to wrap a band around the product would be required to be advanced toward the product for the purpose of applying a band to the product.

Regarding the use of plastic bands as recited in claim 1, it is noted that Wenk teaches the use of metal type bands. Nevertheless, both Fortsch (column 2, lines 34-

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35) and Fukumi (column 7, lines 32-34) teach the use of plastic wrapping bands.

Therefore, once the art recognized employing plastic for the wrapping band, the particular material of construction of the wrapping band would have been an obvious matter of choice and/or design to the ordinarily skilled artisan.

Regarding the step of attaching the anvil to the product, it is not clear as to whether applicants' are actually attaching the anvil to the product or simply associating or placing the anvil along side the product, since the extracting of the anvil from between the product and the band would then require detaching of the anvil, versus simply removing the anvil. In any case, to place the anvil behind the product to be welded, (i.e. between the band and the product) would have been obvious in light of the teachings of Stowman, Stehouwer, Spratt Jr and Susi et al., as discussed above.

Regarding claim 2, Wenk teaches using a tag that is secured to a band that has been wrapped around a food product for the purpose of providing a "kosher" certification (page 2, left column, lines 25-27).

Regarding claim 6, the combination teaches employing welding for connecting the hologram to the band.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2 and 6, above and in further view of Wescombe (US 6226911), Merle (US 1657865) and Propst et al. (US 3952438).

Regarding claim 5, it is noted that Wenk teaches winding the band around and through the meat product. Claim 5 differs in reciting wherein the winding is executed

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through an aperture which has already been formed by the piercing of the product.

Wescombe, for instance, teaches a method for marking a meat product (column 1, lines 7-8) with a tag, wherein the meat is first pierced and after which, a marking tag has been threaded through the opening (column 1, lines 26-34; column 2, lines 4-10). For instance the method further comprises wherein the opening through which the tag is inserted is maintained open so that the tag can be inserted there-through (column 5, line 38). Wescombe also teaches that this can be a mechanical process (column 5, line 18). Further to this point, Merle also teaches first piercing the product and then threading a marking tag there-through (page 2, left column, lines 27-29). Also, Propst et al. teaches that a device to apply a marking tag to a product is advanced to the product and pierces the product and after piercing threads through the marking tag (figures 21, 25 and 26). To therefore wind the band through the product as a result of the step of first piercing by advancing a device for wrapping bands, as taught by Propst et al. would have been an obvious matter of choice and/or design for its art recognized function of applying a tag through a product.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1,2 and 6, above and in further view of Swett (US 3021630) Mogam Holdings (FR2192732) and Diamond (BE839165) and in further view of Sayyadi et al. (US 5425826), Tamura et al. (US 5947364) and Whitecar (US 3494817).

Claim 7 recites that the retracting of the welding means is cyclical in order to arrive at a subsequent batch of said products intended to be marked. As discussed above, it is noted that the patentability of the method cannot be predicated on the particular apparatus employed to perform the method but rather is predicated on the particular steps performed. In this case, the art teaches the concept of providing a mechanical system for marking a product, as evidenced by Spencer, Spratt Jr. and Susi et al. Malosse also evidences a mechanical system wherein the marking of the meat occurs in a recurring manner so that once a first meat product is marked with a tag, a second meat product is moved into position to be tagged. In any case, Swett further teaches the concept of providing a device for marking products wherein the heat sealing of the marking to the meat is performed in a cyclical manner so that subsequent meat products can be marked. Morgam Holdings (figure 3) and Diamond (abstract) teach that it was conventional in the art to implement automated marking systems for meat products. Using an automated welding apparatus for welding an identification tag to a metal wire, wherein the welder is retracted cyclically (i.e. periodically) has been further evidenced by Sayyadi et al. (figure 1 and abstract, for instance). Also, Tamura et al. further teaches a production line type welding operation, wherein the welder moves in a cyclical manner for the purpose of providing welding to subsequent products placed under the welder (figure 2, item 6 and column 2, lines 1-15). This is further evidenced by Whitecar on column 1, lines 43-61. Therefore, once the art recognized the concept of providing a continuous or semi-continuous method for applying a marking tag to a product, in a production style manner, to therefore retract a welder in a cyclical manner

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would have been obvious for the purpose of allowing for the subsequent welding of another product.

Response to Arguments

11. Regarding claim 5, applicants' urge that that there is no suggestion of using an anvil means which is extracted from between the product and the band upon completion of the welding of the hologram to the band.

This argument has been considered but is not persuasive. It is noted that once the art recognized associating a tag to the band, the placement of an anvil that is extracted after the welding would have been wholly dependent on the particular method by which the tag was associated with the band. Nevertheless, the art relied on teaches the use of ultrasonic welding for the purpose of securing a tag to a band. The art also recognized that in order to employ ultrasonic welding, an anvil is required to be placed behind the two materials to be welded together. Thus when ultrasonic welding a tag to a band, to extract the anvil would have been obvious to the ordinarily skilled artisan once the welding was completed.

12. On pages 8-9 of the response, Applicants urge that the combination does not teach or suggest the feeding of a hologram to a location between the top of a welding means and a band.

This argument has been considered but is not persuasive. In light of the discussion above with respect to applicants' arguments regarding claim 5, it is noted

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that once the art recognized using a welding method for securing a tag to a band, it would have been obvious to have placed the tag between the welder and the band for the purpose of welding it to the band. Whether this was a hologram or any other indicia carrying article does not overcome the fact that the particular recited method step would have been obvious.

13. Further on page 9 of the response, applicants urge that Ruell could not be applied to the types of materials described by the combination of patents for the purposes of marking food products.

This argument has been considered but is not persuasive. Applicants have not substantiated why holograms cannot be applied to the types of materials described by the combination of patents. In any case, it is noted that Ruell teaches that the identification card can be made from resistant paper, cardboard or synthetic material (column 3, lines 21-25) and further teaches using ultrasonic welding to secure the hologram to the card. Also, Susi and Stowman teach the use of ultrasonic welding for securing together plastic materials, as well as paper materials.

14. On pages 9-10 of the response, applicants urge that a person of ordinary skill in the art with respect to making of food products is not going to consider obvious a combination of the substantial number of patents cited against claim 7. Applicants further urge that there is no teaching in the combination, in its entirety, which define the concept that the retracting of the welding means is cyclical, in combination with e

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concept of extracting the anvil from between the product and the band after a hologram which has been fed to a location between the tip of a welding means and the band is welded to the band.

This argument has been considered but is not persuasive. It is noted that the art already teaches the concept of providing an authentication marking on the meat, similar to applicants. The art also recognized the concept of using welding for the purpose of securing a tag to a band. Therefore, if one desired the strength of the bond achieved by employing ultrasonic welding, the art teaches that it would have been obvious to have used ultrasonic welding for this purpose. Obviously, when using a production line or an automated process, or even a manual process of marking multiple products, the welder would be required to be extracted for the purpose of moving another product into position for welding. Regarding the number of references, it is noted that, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. Where teachings relied upon to show obviousness were repeated in a number of reference, the conclusion of obviousness was strengthened. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this case, the multiple references provide further evidence that the particular concept of moving an anvil into place behind the product to be welded and also placing a product between a welder and the product to which it is to be attached would have been obvious to the ordinarily skilled artisan, once the art recognized using the conventional method of ultrasonic welding for securing a tag to a band that is wrapped around a product. As also discussed in the rejection above, it is noted that a cyclical movement

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for retracting the welder would also have been obvious for the purpose of facilitating welding of multiple products on a production line type process.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

/V. T./
Examiner, Art Unit 1794